

Friday, 9 November 2018

Weekly Immigration Law Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering immigration

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Executive Summary (1 minute read)

FLH18 v Minister for Home Affairs (FCAFC) - migration law - inappropriate to use 'separate question procedure' concerning issue whether proceeding barred by ss494AB(1)(a) or (ca) *Migration Act 1958* (Cth) - orders to be made

AZO16 v Minister for Home Affairs (FCA) - migration law - refusal to grant protection visa - no error dismissal of application for judicial review - appeal dismissed

DDN16 v Minister for Home Affairs (FCA) - migration law - refusal to grant protection visa - no error in dismissal of application for judicial review - appeal dismissed

DLJ18 v Minister for Home Affairs (FCA) - migration law - refusal to revoke cancellation of applicant's Class XA Subclass 866 (Protection) visa - application for judicial review dismissed

FRO18 v Minister for Home Affairs (FCA) - migration law - refusal to revoke cancellation of Spouse (Permanent) (Class BS) visa - extension of time to seek review refused

Summaries With Link (Five Minute Read)

FLH18 v Minister for Home Affairs [2018] FCAFC 188

Full Court of the Federal Court of Australia

Kenny, Robertson & Griffiths JJ

Migration law - applicant sought various relief and interlocutory relief against Minister for Home

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Affairs and Commonwealth including relief for alleged breach of duty of care, and injunction requiring respondents 'to take all steps within their power' to ensure applicant, parents and siblings brought to Australia from Nauru so applicant could access 'medical treatment and care' - respondents raised issue whether proceeding barred by ss494AB(1)(a) or (ca) *Migration Act 1958* (Cth) (issue) - respondents gave undertaking in respect of bringing applicant, parents and siblings to Australia - Duty Judge ordered determination of issue as separate question - applicant and family transferred to Australia - whether 'separate question procedure remained appropriate in light of developments' - whether separate question 'ripe for determination' - held: Court not satisfied it was appropriate to use separate question procedure - orders to be made.

[FLH18](#)

[From Benchmark Friday, 9 November 2018]

AZO16 v Minister for Home Affairs [2018] FCA 1676

Federal Court of Australia

Griffiths J

Migration law - Minister's delegate declined to grant appellant protection visa - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for judicial review - appellant contended Tribunal misconstrued 'risk and fear of significant harm' in s36(2A) *Migration Act 1958* (Cth) and that judge had dismissed case without considering 'legal and factual errors' in Tribunal's decision - held: no error in decision of primary judge - appeal dismissed.

[AZO16](#)

[From Benchmark Friday, 9 November 2018]

DDN16 v Minister for Home Affairs [2018] FCA 1697

Federal Court of Australia

Robertson J

Migration law - Minister's delegate declined to grant appellant protection visa - Administrative Appeals Tribunal affirmed delegate's decision - Federal Circuit Court dismissed application for judicial review - whether to permit appellant to raise appeal grounds not raised before primary judge - whether primary judge erred in relation to Tribunal's fact-finding concerning credibility of appellant - whether primary judge erred in conclusions concerning 's438 Certificate' - procedural fairness - whether issue arising from non-disclosure of document - held: appeal dismissed.

[DDN16](#)

[From Benchmark Friday, 9 November 2018]

DLJ18 v Minister for Home Affairs [2018] FCA 1650

Federal Court of Australia

Thawley J

Migration law - applicant sought judicial review of Minister's decision under s501CA(4)



Migration Act 1958 (Cth) not to revoke cancellation of applicant's Class XA Subclass 866 (Protection) visa - applicant contended Minister's decision was 'legally unreasonable' due to 'logical disconnect' in reasoning, and that Minister had 'failed to complete the exercise of his jurisdiction' by failure to take into account mandatory consideration that he 'would be barred from returning to Australia' as a consequence of refusal to revoke cancellation - held: application for judicial review dismissed.

[DLJ18](#)

[From Benchmark Friday, 9 November 2018]

FRO18 v Minister for Home Affairs [2018] FCA 1657

Federal Court of Australia

Perry J

Migration law - applicant sought extension of time to seek review of Minister's decision not to revoke delegate's cancellation under s501(3A) *Migration Act 1958* (Cth) of his Spouse (Permanent) (Class BS) visa - ss476A(1)(c) & 501CA of the Act - explanation for delay - prospects of success on grounds of judicial review - whether grounds identified the 'the particular respects' in which Minister had allegedly fallen into jurisdictional error - held: application dismissed.

[FRO18](#)

[From Benchmark Friday, 9 November 2018]

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Floating Island

By: Dorothy Wordsworth

Harmonious Powers with Nature work

On sky, earth, river, lake, and sea:

Sunshine and storm, whirlwind and breeze

All in one duteous task agree.

Once did I see a slip of earth,
By throbbing waves long undermined,
Loosed from its hold; — how no one knew
But all might see it float, obedient to the wind.

Might see it, from the mossy shore
Dissevered float upon the Lake,
Float, with its crest of trees adorned
On which the warbling birds their pastime take.

Food, shelter, safety there they find
There berries ripen, flowerets bloom;
There insects live their lives — and die:
A peopled world it is; in size a tiny room.

And thus through many seasons' space
This little Island may survive
But Nature, though we mark her not,
Will take away — may cease to give.

Perchance when you are wandering forth
Upon some vacant sunny day
Without an object, hope, or fear,
Thither your eyes may turn — the Isle is passed away.

Buried beneath the glittering Lake!
Its place no longer to be found,
Yet the lost fragments shall remain,
To fertilize some other ground.

https://en.wikipedia.org/wiki/Dorothy_Wordsworth

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